TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 436.

CHARLES L. BENEDICT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 30, 1899.

(17,549.)

(17.549.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 435.

CHARLES L. BENEDICT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition and amended petition	1	1
Traverse	6	3
Findings of fact and conclusion of law	7	4
Opinion of the court	8	5
Judgment of the court	10	7
Application for and allowance of appeal	11	8
Certificate of clerk	12	8

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 18, 1899.

1 In the Court of Claims.

CHARLES L. BENEDICT
vs.
THE UNITED STATES. } No. 21156.

I.—*Petition and Amended Petition.*

On the 28th day of September, A. D. 1898, the claimant filed his original petition, and on April 20, 1899, in lieu of said original petition, by leave of court, he filed his amended petition, which is as follows:

Amended Petition.

To the honorable the justices of the United States Court of Claims:

Charles L. Benedict, the plaintiff herein, respectfully represents:

First. He is a citizen of the United States, of lawful age and resides at Dongan Hills, Staten island, in the city of New York and in the State of New York.

Second. That in the month of April, 1865, he was duly appointed by the President of the United States judge of the district court of the United States for the eastern district of New York.

Third. That he duly entered upon the duties of said office and duly performed the same until the year 1897, during which and on or about the 20th of July, 1897, he resigned his office, having
2 then held his commission as judge of said court for more than ten years, and having attained the age of seventy and upwards.

Fourth. That on the 7th day of February, 1873, the Congress of the United States passed an act as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That additional terms of the circuit court of the United States for the southern district of New York shall hereafter be held in each year, commencing as follows: On the second Wednesday of January, on the second Wednesday of March, on the second Wednesday of May, on the third Wednesday of June, on the second Wednesday of October, and on the second Wednesday of December. The holding of any of the above-mentioned terms shall not dispense with or affect the holding of any other term of the court at the same time, nor shall the pending of any other term of the court prevent the holding of any of the terms hereby appointed.

"SEC. 2. That the terms hereby appointed shall be devoted exclusively to the trial and disposal of the criminal cases and matters arising and pending in said court. The terms of said court appointed by this act may be held by the circuit judge of the second judicial circuit and the district judges for the southern and eastern districts of New York, or any one of said three judges; and at every such term held by said judge of said eastern district he shall receive the sum of three hundred dollars, the same to be paid in the

manner now prescribed by law for the payment of the expenses of another district judge while holding court in said district."

3 That thereafter, on the passage of the Revised Statutes of the United States, the provisions of the said act of February 7th, 1873, were embodied in section 658 of the Revised Statutes, which provides as follows:

"SECTION 658. The regular terms of the circuit courts shall be held in each year at the times and places following. * * * In the southern district of New York at the city of New York * * * exclusively for the trial and disposal of criminal cases and matters arising and pending in said court, on the second Wednesday in January, March and May, on the third Wednesday in June, on the second Wednesday in October and December;" and also in the 613th section of said Revised Statutes, which provides as follows: "The terms of the circuit court for the southern district of New York appointed exclusively for the trial and disposal of criminal business may be held by the circuit judge of the second judicial court and the district judges for the southern and eastern districts of New York, or any one of said three judges, and at every such term held by the said judge of said eastern district he shall receive the sum of $300, the same to be paid in the manner now prescribed by law for the payment of the expenses of another district judge while holding court in said district."

Fifth. That since the passage of said act of 1873, the plaintiff has held, under the provisions of that act and of the Revised Statutes above referred to, those six terms of the circuit court of the United States, for the southern district of New York, in every year, and has received as his salary for holding said terms the sum of $1,800 in each year.

4 Sixth. And the plaintiff further alleges that during the year previous to his resignation as above stated he received the said salary of $1,800 for that year, which was payable to him by law for said judicial services, and also the salary of $5,000 payable by law for the judicial services rendered by him in the eastern district as provided by the act of Congress of February 24, 1891 (26 Stats. at L., p. 783).

Seventh. And the plaintiff further alleges that the 714th section of the Revised Statutes of the United States provides as follows: "When any judge of any court of the United States resigns his office after having held his commission as such at least ten years, and having attained the age of seventy years, he shall during the residue of his natural life receive the same salary which was by law payable to him at the time of his resignation."

Eighth. And the plaintiff further alleges that during the year previous to his resignation he received from the United States as compensation for his judicial services the sum of $6,800 which was the salary which was by law payable to him during that year, and at the time of his resignation.

5 Ninth. And the plaintiff further alleges that he has not received during the period since his resignation the same salary which was by law payable to him at the time of his resigna-

tion, but he has only received at the rate of $5,000 per year, part of the salary so by law payable to him, which part has been received by him without prejudice to the claim which he makes herein.

Tenth. And the plaintiff further alleges that he has presented to the auditor of the State and other departments a bill for the amount of his salary for one year so remaining due and unpaid, and made claim on the said auditor for the payment of such bill, but said auditor has refused to audit or approve the said bill, and the said remainder of the plaintiff's said salary still remains due and unpaid to him, with interest from the 20th day of July, 1898.

Wherefore the plaintiff claims from the United States the sum of $3,150, with interest, and prays that judgment be entered against the United States in favor of the plaintiff for the sum of $3,150, with interest on $1,800 from the 20th day of July, 1898, and the costs of this suit, and that process issue therefor, and that plaintiff may have such other and further relief as the court in the premises may consider equitable and just.

CHAS. L. BENEDICT.

R. D. BENEDICT,
Attorney for Petitioner.

STATE OF NEW YORK, }
Eastern District of New York. }

I do solemnly swear that I have read the foregoing amended petition by me subscribed and know the contents thereof, and the facts therein stated upon personal knowledge are true, and those stated upon information and belief I believe to be true, and that the sum herein claimed is justly due to me from the defendant, exclusive of all set-offs and all just grounds of defence.

CHAS. L. BENEDICT.

Subscribed and sworn to before me this 14 day of April, 1899.
B. LINCOLN BENEDICT,
[SEAL.] *U. S. Commissioner.*

6 II.—*Traverse.*

Term 1898–1899.

CHARLES L. BENEDICT
v.
UNITED STATES. } No. 21156.

And now comes the Attorney General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

L. A. PRADT,
Ass't Att'y General.

Filed March 16, 1899.

7 III.—*Findings of Fact and Conclusion of Law.*

This case having been heard by the Court of Claims, the court find the facts (as agreed to by the parties) to be as follows:

First. The petitioner, Charles L. Benedict, is a citizen of the United States, of lawful age, and resides at Dongan Hills, Staten island, in the city of New York, and State of New York.

Second. In the month of April, 1865, the petitioner was duly appointed by the President of the United States judge of the district court of the United States for the eastern district of New York.

Third. The petitioner duly entered on the duties of his office, and duly performed the same until the year 1897, during which, and on or about the 20th of July, 1897, he resigned his office, having then held his commission as judge of said court for more than ten years, and having attained the age of 70 and upward.

Fourth. Since the passage of the act of February 7, 1873, the petitioner has held, under the provisions of that act, and of the Revised Statutes, to wit, sections 613 and 658 of the Revised Statutes, the six terms of the circuit court of the United States for the southern district of New York, referred to in said statutes, in every year, and has received for holding each of said terms the sum of $300; the same being paid to him by the United States marshal for the southern district of New York, pursuant to sections 613 and 597, Revised Statutes.

Fifth. That the same was paid upon a voucher in substance as follows:

"UNITED STATES OF AMERICA, }
Southern District of New York. }

I, Charles L. Benedict, district judge of the eastern district of New York, hereby certify that I have held the circuit court of the United States for the southern district of New York at the — term thereof, provided for by section 613 of the Revised Statutes of the United States, and that I am entitled to receive therefor the sum of $300, as provided in said section.

(Signed) CHARLES L. BENEDICT
(and dated)."

"Received of —— ——, United States marshal for the southern district of New York, the sum of $300 in full of the above account.

(Signed) CHARLES L. BENEDICT."

The total amount thus paid annually to the plaintiff was $1,800.

Sixth. That such payments to the petitioner by the marshal were from time to time allowed in the marshal's accounts and paid to him out of the appropriations for defraying the expenses of the courts of the United States.

Seventh. During the year previous to the petitioner's resignation he received the said $1,800 for that year, in accordance with the provisions of sections 613, 597, and 658, Revised Statutes, as above

set forth, and also the salary of $5,000, payable to him, as provided by the act of Congress of February 24, 1891 (26 Stat. L., 783), out of the appropriation to pay the salaries of district judges of the United States.

Eighth. During the year since his resignation petitioner has only received as salary the sum of $5,000, which sum has been received by him without prejudice to the claim which he makes in this proceeding.

Ninth. The petitioner presented to the auditor of the State and other departments a bill for the amount of his salary claimed by him herein to be remaining due and unpaid, and made claim on the auditor for the payment of said bill, but the auditor refused to audit or approve the said bill, and no part of the said $1,800 has been paid to him.

January 7, 1899.

ROBERT D. BENEDICT,
Attorney for Claimant.
L. A. PRADT,
Assistant Attorney General.

Conclusion of Law.

Upon the foregoing facts the court find as conclusion of law that the petition should be dismissed.

8 IV.—*Opinion of the Court.*

DAVIS, J., delivered the opinion of the court:

After long, faithful, and distinguished service as judge of the district court of the United States for the eastern district of New York, the plaintiff, July 20, 1897, availed himself of the privilege of the retiring act, and has since received the salary of district judge (sec. 714, R. S.).

The question now presented is as to the sum of $1,800 a year in addition to the stated salary for the judge of the eastern district, which, in fact, at the time of his retirement Judge Benedict was receiving for services performed in the district court for the southern district of New York; this in addition to his duties in the eastern or Brooklyn district.

It appears that plaintiff was appointed judge of the district court of the United States for the eastern district of New York in April, 1865; that he performed the duties of this office until July, 1897, when, having the right thereto under the statute, he retired.

Section 714 of the Revised Statutes provides that "when any judge of any court of the United States resigns his office, after having held his commission as such at least ten years, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the same salary which was by law payable to him at the time of his resignation."

Judge Benedict is in a position peculiar to the particular office he

held, and he claims that by reason of this exceptional position he is entitled to larger payment from defendants than the simple salary of a district judge.

Congress (act 7 February, 1873) directed that certain additional terms of the circuit court (southern district of New York) should be held, which should "not dispense with or affect the holding of any other term of the court at the same time," these terms to be devoted to "criminal matters." It was further provided in the act that these terms might "be held by the circuit judge of the second judicial circuit and the district judges for the southern and eastern districts of New York, or any one of said three judges; and at every such term held by said judge of said eastern district he shall receive the sum of three hundred dollars, the same to be paid in the manner now prescribed by law for the payment of the expenses of another district judge while holding court in said district." Sections 658 and 613, Revised Statutes, also relate to the matter under consideration. Section 658, "The regular terms of the circuit court shall be held in each year at the times and places following: * * * In the southern district of New York, at the city of New York, * * * exclusively for the trial and disposal of criminal cases and matters arising and pending in said court, on the second Wednesday in January, March, and May; on the third Wednesday in June; on the second Wednesday in October and December."

Section 613 (Rev. Stat.) prescribes that: "The terms of the circuit court for the southern district of New York, appointed exclusively for the trial and disposal of criminal business, may be held by the circuit judge of the second judicial circuit and the district judges for the southern and eastern districts of New York, or any one of said three judges, and at every such term held by the said judge of said eastern district he shall receive the sum of three hundred dollars, the same to be paid in the manner now prescribed by law for the payment of the expenses of another district judge while holding court in said district."

For twenty-four years Judge Benedict held these terms and received the compensation thus provided by statute, to wit, $1,800 a year; this in addition to his salary as judge of the eastern district.

It is now urged that under section 714, Revised Statutes (which provides that a retiring judge shall receive "the same salary which was by law payable to him"), the plaintiff may be paid not only the $5,000 per annum as district judge, sitting in the eastern district of New York, but also the $1,800 specified in this section (613) of the Revised Statutes. The question is thus clearly and tersely stated by plaintiff's counsel: "Was this $1,800, paid to Judge Benedict yearly for twenty-four years, and provided for by section 613, a part of his salary which was by law payable to him?"

9 It is urged that "the same salary which was by law payable to him" means the salary received by the judge for judicial services during the year previous to his resignation; or, if it mean not that, it must mean "the salary he would have received during the year after the date of his resignation if he had not resigned."

The retired judge is to receive the salary payable to him by law as the law existed at the date of his retirement. But it is salary he is to receive, not emoluments; salary, simply; the salary of the office which he yields The question presented is absolutely exceptional; its decision can affect the district judge of the Brooklyn district alone.

Was this $1,800 a year salary? The important element of salary is certainty of amount in relation to duration of time. Severity of duty, of responsibility, or of labor have no relation to receipt of salary, although these elements control the minds of those who fix the amount of salary. Because of this certainty of receipt, salary is usually relatively low for the class of service required.

As judge of the eastern district, sitting in that district, Judge Benedict, without condition as to amount of business or length of terms, was entitled to a salary certain. As to his services in the southern district there were contingencies: In the first place the term of the circuit court in the southern district for criminal business "may" be held by the district judge of the eastern district—not "must" be held; on the contrary, it may as well be held by either the circuit judge of the second judicial court or the district judge for the southern district. The only distinction made by the law is that if the judge of the eastern district hold the court he shall receive extra compensation, to which the others are not entitled; but this is contingent upon the fact that he in fact do hold the court. If ill and unable to hold his court in the eastern district, this plaintiff's salary would run; if ill and unable to attend in the southern district he would not receive the compensation to that service allotted, for the statute provides pay only for the judge of the eastern district who in the southern district holds a term. That is, the extra pay is for extra work in fact performed. This pay does not attach to the office of judge of the eastern district, but he becomes entitled to it only because he actually holds the term.

We do not think that this extra compensation was part of the salary "by law payable" to Judge Benedict when he retired. Therefore the petition will be dismissed.

10 V.—*Judgment of the Court.*

CHARLES L. BENEDICT
vs.
UNITED STATES. } No. 21156.

At a Court of Claims, held in the city of Washington, on the 16th day of October, A. D. 1899, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of Charles L. Benedict, claimant, be dismissed.

BY THE COURT.

11 VI.—*Application for and Allowance of Appeal.*

From the judgment rendered in the above-entitled cause on the 16th day of October, 1899, in favor of the defendants, the claimant, by his attorney, on the 16th day of October, 1899, makes application for and gives notice of an appeal to the Supreme Court of the United States.

ROBERT D. BENEDICT,
Attorney for Petitioner, 68 Wall Street, New York City.

Filed October 16, 1899.

At a Court of Claims, held October 16, 1899, on motion of claimant's attorney, it was ordered that said application for appeal be allowed as prayed for.

BY THE COURT.

12 In the Court of Claims.

CHARLES L. BENEDICT
vs.
THE UNITED STATES. } No. 21156.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the opinion of the court, of the judgment of the court dismissing the petition, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington city, this 26th day of October, A. D. 1899.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No., 17,549. Court of Claims. Term No., 435. Charles L. Benedict, appellant, *vs.* The United States. Filed October 30th, 1899.